

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed July 16, 2007. At the time of the Office Action, Claims 1-30 were pending in the Application. Applicant amends Claims 1, 11, and 21. The amendments to these claims are not the result of any prior art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Double Patenting Rejection

The Examiner rejects Claims 1, 2, 4, 11, 12, 14, 21, 22, and 24 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-6 of U.S. Patent No. 6,091,725. The Examiner rejects Claims 1-4, 6, 8, 10, 11-14, 16, 18, 20, 21-24, 26, 28, and 30 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 2, 19, 20 and 24 of U.S. Patent No. 6,798,776.

These rejections are moot in light of the amendments to the claims.

Section 112 Rejections

The Examiner rejects Claim 1 under 35 U.S.C., second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Independent Claim 1 recites an operation in which a new virtual path is created to process the packet in response to the packet not being associated with any existing virtual path. In the alternative, where there is an existing path, the packet is processed according to the existing virtual path in response to the packet being associated with the existing virtual path. Applicant hopes this brief explanation has resolved the Examiner's concern.

Section 102 Rejections

The Examiner rejects Claims 1-4, 11-14, and 21-24 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,528,592 issued to Schibler et al. (hereinafter "*Schibler*"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.¹ In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."² In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

No reference of record, including *Schibler*, offers an architecture in which *processing of the packet is executed on a per-flow basis such that traffic management, packet forwarding, and access control operations are achieved for selected flows, whereby bandwidth allocations and buffer resource elections are executed for the selected flows*, as is recited in Independent Claim 1. Note that both bandwidth allocations and buffer resource elections are performed for individual flows. This offers a granular solution for even robust network communication systems. [For example, see Applicant's Specification at pages 8-9 for support.] For at least these reasons, Independent Claim 1 is easily allowable over *Schibler*.

The other Independent Claims recite limitations similar, but not identical, to those recited in Independent Claim 1. Therefore, these claims are also allowable, for example, for the same reasons as identified above. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons. Accordingly, all

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

Section 103 Rejections

The Examiner rejects Claims 5, 6, 8, 15, 16, 18, 25, 26 and 28 under 35 U.S.C. § 103(a) as being unpatentable over *Schibler* in view of U.S. Patent No. 5,892,924 to Lyon (hereinafter "*Lyon*"). These rejections are moot in light of the arguments presented above: specifically, because no reference of record teaches several of the limitations of the pending subject matter and, hence, a proper §103 rejection cannot be sustained.

Thus, all of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these pending claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fees are due; however, if this is not correct the Commissioner is hereby authorized to charge any amount required or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,
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